IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 429

NATIONAL MUTUAL INSURANCE COMPANY OF THE DISTRICT OF COLUMBIA, *Petitioner*,

v.

TIDEWATER TRANSFER COMPANY, INCORPORATED, a corporation of the State of Virginia

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Of Counsel
NEWMYER & BRESS
1001 15th St., N. W.
Washington, D. C.
MORRIS GEWIRZ
Investment Bldg.
Washington, D. C.
THEODORE SHERBOW
322 Equitable Bldg.
Baltimore, Md.

ALVIN L. NEWMYER
DAVID G. BRESS
SHELDON E. BERNSTEIN
Counsel for Petitioner
1001 15th Street, N. W.
Washington, D. C.

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The petitioner, National Mutual Insurance Company of the District of Columbia, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fourth Circuit, affirming the judgment of the District Court for the District of Maryland dismissing petitioner's complaint for lack of jurisdiction.

Opinions Below.

The majority and dissenting opinions of the circuit of appeals (R. 10-22) are reported at F. 2d . No opinion was filed by the district court.

Jurisdiction.

The judgment of the circuit court of appeals was entered December 31, 1947 (R. 22). The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether the Act of April 20, 1940 amending Section 24, (1) (b) of the Judicial Code to give the District Courts of the United States original jurisdiction of suits of a civil nature between citizens of the several states and citizens of the District of Columbia is constitutional.

Constitutional Provisions and Statute Invovlved.

Section 24 of the Judicial Code (28 USC 41), as amended by the Act of April 20, 1940 c. 117, 54 Stat. 143, provides in pertinent part:

> "The District Courts shall have original jurisdiction as follows:
>
> (1) United States as plaintiff; civil suits at common law or in equity. First. Of all suits of a civil nature, at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and * * * (b) is between citizens of different States or *citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory.*"[1]

The Constitution of the United States in pertinent part provides: Article I, Section 8,

> "The Congress shall have power * * * to exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, * * *

[1] The italicized portions were added by the amending statute of April 20, 1940.

Article III, Section 1

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article III, Section 2

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States;—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT.

Petitioner, a corporation of the District of Columbia, and respondent, a corporation of the State of Virginia (R. 1, 6) entered into a contract of insurance on September 30, 1942 (R. 1). Thereafter, on August 12, 1947, petitioner, the insurer, filed a civil suit against respondent in the District Court for the District of Maryland to recover from the respondent money due and owing under the insurance contract. (R. 1-5).

Petitioner asserted in its complaint that the district court had jurisdiction of the cause under Section 24 (1) of the Judicial Code (R. 1). On motion of the respondent (R. 5), the district court, on September 18, 1947, entered an order (R. 6) dismissing the complaint on the ground that the

Act of April 20, 1940, "is unconstitutional to the extent that it amended Section 41 (1) (b) of Title 28 U. S. C. A. [Section 24 (1) (b) of the Judicial Code] by extending the jurisdiction of the Federal Courts beyond controversies between citizens of different states". Thus the district court in effect held that Congress could not empower it to entertain suits between citizens of the District of Columbia and citizens of the States.

On appeal to the Circuit Court of Appeals for the Fourth Circuit, the judgment of the district court was affirmed, Senior Circuit Judge Parker dissenting. The majority of the court below held (R. 10-18): (1) that the District of Columbia was not a state proper in the sense intended by Article III of the Constitution and that, therefore, Congress could not confer upon federal courts established pursuant to that Article jurisdiction over suits between citizens of the states proper and citizens of the District of Columbia, and; (2) that the Congressional authority under Article I, Section 8, while plenary and far reaching, nevertheless was limited, insofar as the creation of judicial authority was concerned, to the establishment of courts to sit territorially within the District of Columbia. The Senior Circuit Justice, dissenting (R. 18-22), was of the view that since a prime requisite of our system of government was the assurance of equal justice to all, the Constitution should not and need not be so interpreted as to fail to afford to a large segment of our population equal access to courts created thereunder. Judge Parker was of the opinion that the authority conferred upon Congress by Article I, Section 8, empowered it to create courts to sit in or outside of the territorial limits of the District of Columbia to hear causes involving District citizens or, as it did by the Act of April 20, 1940, to combine such jurisdiction with that of the ordinary federal courts already created by Congress under Article III of the Constitution.

Specification of Errors to be Urged.

The Circuit Court of Appeals erred:

1. In affirming the judgment of the district court.

2. In holding that the Act of April 20, 1940, was unconstitutional insofar as it amended Section 24 (1)(b) of the Judicial Code to give the District Courts original jurisdiction of suits between citizens of the District of Columbia and citizens of the States proper.

REASONS FOR GRANTING THE WRIT.

This case presents for the first time in this Court the question of the constitutionality of the Act of April 20, 1940, insofar as it amended Section 24 (1) (b) of the Judicial Code (supra p. 2) to give the federal courts original jurisdiction, on the basis of diversity of citizenship, where one party is a citizen of the District of Columbia.

As of the writing of this petition, the question has been decided by two Circuit Courts of Appeal, the court below and the Seventh Circuit,[2] by ten District Courts,[3] and is pending before the Third Circuit Court of Appeals.[4] Both the Fourth and Seventh Circuits held the statute unconstitutional over vigorous dissents, in both cases, of the

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[2] *Central States Cooperatives, Inc. v. Watson Bros. Transportation Company, Inc.*, — F. 2d — (decided December 12, 1947), reversing — F. Supp. — (N. D. Ill.)

[3] Constitutionality upheld: *Duze* v. *Wooley*, 72 F. Supp. 422 (D. Hawaii); *Glaeser* v. *Acacia Mutual Life Association*, 55 F. Supp. 925 (N. D. Cal.); *Winkler* v. *Daniels*, 43 F. Supp. 265 (E. D. Va.). See also footnote 2 *supra*.

Constitutionality denied: *Willis* v. *Dennis*, 72 F. Supp. 853 (W. D. Va.); *Feely* v. *Sidney S. Schupper Interstate Hauling System*, 72 F. Supp. 663 (D. Md.); *Wilson* v. *Guggenheim*, 70 Supp. 417 (E. D. S. C.); *Ostrow* v. *Samuel Brilliant Co.*, 66 F. Supp. 593 (D. Mass.); *Behlert* v. *James Foundation of New York*, 60 F. Supp. 706 (S. D. N. Y.); *McGarry* v. *City of Bethlehem*, 45 F. Supp. 385 (E. D. Pa.).

[4] *Francis Van Sant* v. *American Express Co.*, No. 9044 (CCA 3) now pending on second reargument.

Senior Circuit judges. The District Courts have divided on the question. Thus the lower courts "have experienced a 'field day' in constitutional erudition".[5] Additionally, there are numerous articles in legal periodicals on the question, almost all of which have spoken quite strongly in favor of the constitutionality of the statute.[6]

In this posture of divided authority, and particularly since controlling appellate decisions have held that Congress lacks constitutional authority to provide judicial forums for citizens of the District of Columbia on an equal and like basis as those provided for citizens of the States proper, the substantial importance of the question and the need for this Court to assume jurisdiction to decide the issue on writ of certiorari seems self-apparent. This conclusion would appear buttressed by the fact that the Solicitor General of the United States has advised that he will, upon the filing of this petition, file a motion for leave to intervene in support of this petition for a writ of certiorari.

Perhaps the significance of the question petitioner seeks this Court finally to resolve is best gained by reference to the exhaustive treatment of the problem in the majority and dissenting opinions below and of the Seventh Circuit. In any event, petitioner will briefly review what it deems to be the more important facets of the problem.

To implement Article III of the Constitution, the first Congress enacted the First Judiciary Act creating inferior federal courts and giving them jurisdiction, *inter alia*, of civil suits between citizens of different states or between citizens of the states and foreign citizens. Act of September 24, 1789; 1 Stat. 73, 78. In a decision rendered at one of its earliest terms, this Court, speaking through Chief Justice Marshall *held* that citizens of the District of Columbia were not citizens of a state within the meaning of the

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[5] *Central States* case, footnote 2, *supra*.

[6] See e.g. 29 Geo. L. J. 193; 5 La. L. Rev. 478; 21 Texas L. Rev. 83; 21 Tulane L. Rev. 171; 11 Geo. Wash. L. Rev. 258. *Cf* XV D. C. Bar Asso. J. 55; 55 Yale L. J. 600.

First Judiciary Act and that, consequently, the federal courts had no diversity jurisdiction of a civil suit between a citizen of the District and a citizen of a state proper. *Hepburn v. Ellzey*, 2 Cranch 445. The foregoing decision did not consider various possible constitutional bases for further Congressional action to empower federal courts generally to entertain suits between citizens of the District and citizens of the states proper.

Federal jurisdiction based on diversity of citizenship remained static until 1940 when Congress realized that, under existing law, large segments of our population were precluded from seeking relief in the federal courts even though the same privilege was open even to aliens. To alleviate the situation of well over a million citizens of the District of Columbia and millions of citizens of the territories and to give them access to the federal courts generally on an equal footing with citizens of the states proper and with aliens, Congress passed the Act of April 20, 1940, amending Section 24 (1) (b) of the Judicial Code.

In its report accompanying the bill which became the amending act, the Judiciary Committee of the House of Representatives, after stating the purpose of the bill and reciting at some length the reasons and authority from which it concluded that "there appears to be no constitutional objection to this bill", stated:

> "It is submitted that H. R. 8822 is a reasonable exercise of the constitutional power of Congress to legislate for the District of Columbia and for the Territories. It should be borne in mind that the citizens of the District of Columbia and of the Territories are citizens of the United States. They are subject to the burdens and obligations of such citizenship just as are the citizens of the 48 States. Simple justice requires that they should share the rights and privileges of such citizenship insofar as Congress has authority to confer it upon them. This is the real intent of the Constitution".

[7] H. Rep. 1756, 76th Cong. 3d Sess., accompanying H. R. 8822.

Without full consideration of the problem by this Court it is questionable whether a solemn Act of Congress so designed should be deemed abortive where there is substantial and well-considered legislative, judicial and other authority legitimizing the measure. The consequences are, of course, apparent. Citizens of the District of Columbia, as well as those of the territories, although citizens and taxpayers of the United States and entitled to equal treatment under our laws, cannot in the federal courts of general jurisdiction seek relief against citizens of the states proper or even against aliens. They can only hope for such treatment as they may receive in the local courts of the several states of which their opponents are citizens. Thus, the constitutional motive for the creation of an independent federal judiciary to decide controversies between citizens of different communities unprejudiced by local influences, sentiments and bias is frustrated so far as millions of Americans are concerned even though that same impartial justice is available even to aliens in our midst. See *Hepburn* v. *Ellzey*, 2 Cranch at 453.

Petitioner submits that there is substantial and persuasive constitutional authority to avoid such unfair and impractical consequences. While, if given the opportunity by a grant of certiorari, petitioner will present the constitutional authority for the Act of April 20, 1940, in greater detail, briefly petitioner suggests that Congress was empowered to enact such legislation by the combined authority of Article I, Section 8, Article III, Section 1 and the inherent philosophy of our system of government. We start with the premises that ours is a system of equal justice under law and that our government, like any democratic government, must afford its citizens adequate facilities for resolution of their disputes. The Constitution, in Article III, Section 1, provides for the creation of superior and inferior courts for these purposes. While the inferior courts thus authorized are jurisdictionally limited by the

terms of Article III, Section 2,[8] nevertheless the constitution also provides in Article I, Section 8, that Congress should have plenary authority over the area established as the seat of government including the power "to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution." It is now established, of course, that the latter provision authorized, at least, the creation of a system of courts to sit in and for the District of Columbia. But since in legislating for the District of Columbia Congress acts not as a local legislature but under its national power, its power *qua* District of Columbia operates throughout the United States. See *Cohen* v. *Virginia* 6 Wheat 264, 424-429. Consequently, as a necessary incident to its authority to legislate for the District and its population, Congress could create courts to sit anywhere to hear causes involving District citizens.

The majority below apparently believed that insofar as Congress has authority under the Constitution to establish courts for the District, that power is limited geographically to the District. But no such geographical limitation is expressed in Article I, Section 8. See *Cohen* v. *Virginia*, *supra*. And since Congress has found as a fact that it is appropriate and necessary to afford to citizens of the District access to Federal Courts outside of the District in order to assure them of the protection of our laws, there is no basis for reading into Article I, Section 8 any such geographical limitation. Congress could, therefore, under Article I, Section 8, establish independent tribunals outside of the District with such jurisdiction as was conferred by the Act of April 20, 1940. Nor is there any apparent

[8] The court below rendered its decision on the premise that the clause in Article III, Section 2 reading "between citizens of different States" employed the word "States" in its political sense. However, it is arguable that the word taken in context was intended in a geographic sense and that *Hepburn* v. *Ellzey* *supra* pp. 6-7, to the extent that it casts an inference to the contrary, should be reexamined.

reason why instead of creating new courts outside the District for such purposes, the same strictly judicial authority could not be conferred upon such federal courts as have already been created under Article III of the Constitution.

CONCLUSION.

The question presented is patently one of grave importance to masses of American citizens. The decision below —in conflict with other decisions—adopts an unnecessarily restrictive approach to the constitutional authority of Congress to provide adequate judicial forums for citizens of the District of Columbia. Only this Court can finally resolve the constitutional question. We therefore respectfully submit that this petition for a writ of certiorari should be granted.

ALVIN L. NEWMYER
DAVID G. BRESS
SHELDON E. BERNSTEIN
Counsel for Petitioner

1001 15th Street, N. W.
Washington, D. C.

Of Counsel

NEWMYER & BRESS
1001 15th St., N. W.
Washington, D. C.

MORRIS GEWIRZ
Investment Bldg.
Washington, D. C.

THEODORE SHERBOW
522 Equitable Bldg.
Baltimore, Md.

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